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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,680	08/14/2001	Charles M. Schmeichel	A20-009-01-US	3176

22854 7590 08/27/2003  
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EXAMINER

CHENEVERT, PAUL A

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/930,680	SCHMEICHEL ET AL.
	Examiner Paul A. Chenevert	Art Unit 3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 08 August 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,7,8,12,13,17 and 18 is/are rejected.

7) Claim(s) 4-6,9-11 and 14-16 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 15 January 2003 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 12-16 are objected to because of the following informalities:
  - a. Claim 12, line 4, "the flexible cover having first and second ends," is repeated in the description of the flexible cover on line 7 and thus should be deleted.
  - b. The preamble of claim 14 repeats limitations originally introduced in depended upon claim 12. It is suggested to delete the text beginning on line 1 of claim 14 "wherein the perimeter..." through line 6 "...opposing side walls;".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 7, 8, 12, 13, 17 & 18 are newly rejected under 35 U.S.C. 102(b) as being anticipated by **Thomsen et al. (U.S. Patent 5,860,691 cited in Office paper no. 7)**.

Thomsen et al. disclose a tonneau cover apparatus (10) comprising: a flexible cover (fabric 100); a pivoting end plate (rigid end rails 104) having a radial engaging surface (guiding edge 138); a support frame (16) having side rails (34); and a locking member (rod 118); wherein each side rail includes an end plate engagement member (latch 38); and wherein the end plate engagement members have a radial receiving surface (receiving slot 136).

In regards to the locking member limitation of claims 3, 8, 12, & 18, it is noted that when the rod (118) is seated in the rod seat (122) it is connected to the end plate (104) rearward of the end plate engagement member (38) in a first position. When the rod is removed from the rod seat, it is not connected to the end plate and is thus it is in a second position. In the first position the rod prevents the end plate from being disengaged from the end plate engagement member (in a fixed stretched position) and wherein when the rod is in the second position the cover is not connected to the end plate and therefore the end plate can easily be disengaged from the end plate engagement member (fixed stretched position).

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

5. The indicated allowability of claims 12-16 is withdrawn in view of the new rejection of the locking member.

6. Claims 4-6, 9-11 & 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims along with the deletion of the objectionable preamble limitations of claim 14.

7. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not show or make obvious Applicant's detailed locking member (see claim 4 for details).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Continued Examination Under 37 CFR 1.114***

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is 703-305-0837. The examiner can normally be reached on Mon-Fri (8:30-5:00).

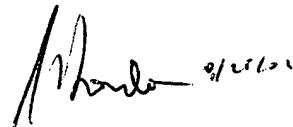
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

Paul A. Chenevert  
Examiner  
Art Unit 3612

pac

PAC

  
9/26/02

STEPHEN T. GORDON  
PRINCIPAL EXAMINER